

## Agricultural Law Memo

**ALM 10-03**

*rev. August 10, 2010*

**TOPIC:** Farm Labor Housing and Zoning

**ISSUE:** Often the application of zoning provisions applied to proposed building construction or uses can lead to incorrect or restrictive decisions on the part of local zoning enforcement officers when such provisions are applied to proposals involving farm labor housing. The purpose of this memorandum is to clarify the relationship between farm labor housing, structures used for agriculture, and Massachusetts General Laws, Chapter 40A, Section 3.

Farmers often face the need to provide housing for farm workers. To meet that need, the options include construction of a new dwelling or conversion of an existing building for farm labor purposes. It is not uncommon for disagreements to arise between the farmer, asserting the “agricultural exemption” accorded by General Laws, Chapter 40A, Section 3, and the local zoning enforcement officer, who would apply the provisions of the local zoning by-law relating to “residential use” and various dimensional requirements applicable to non-agricultural residential buildings.

Section 3 provides in pertinent part: “No zoning ordinance or by-law shall . . . prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture”. The statute is clear in its intent to restrict local zoning ordinances or by-laws from prohibiting, unreasonably regulating, or requiring a special permit for the construction and use of a structure – including farm labor housing – that has as its primary purpose commercial agriculture. Zoning would thus not be a basis for the denial of the farmer’s application for a building permit as required by the state building code; additionally, certain other statutes and regulations may nevertheless continue to apply, such as G.L. [c. 111, §128G](#), and [105 CMR 420.00](#) et seq.

A structure or building constructed or used as housing farm labor has commercial agriculture as its primary use. Section 3 makes no distinction between farm labor housing for a single family or for housing a group of laborers. Although the city or town may “reasonably regulate” structures and uses enjoying the agricultural exemption from zoning, any such effort to regulate may not result in the functional equivalent of a prohibition or a requirement for a special permit, and must be justified on significant, independent health or welfare grounds.

A determination as to whether the protections of Section 3 apply depends on the facts of the situation at hand. As a case in point, in a recent decision that was decided largely on unique procedural grounds, the Land Court concluded that a multi-occupancy residential building was predominantly residential to land whose primary purpose was agriculture. In light of this, the Court upheld the application of the zoning by-law’s provisions applicable to residential properties generally. However, the Court reaffirmed the basic zoning principles that apply when determining whether a structure or use is sufficiently “incidental” to a permitted use as to cloak it

with the protections accorded to the use to which it is connected. On the unique facts presented in this case, the Court was forced to conclude that "...the newly constructed space was not used for the primary purpose of agriculture, but was intended and, if the relief requested were granted, would serve primarily residential purposes." The Court further held that identifying as incidental use is a "fact-dependent inquiry, which both compares the net effect of the incidental use to that of the primary use and evaluates the reasonableness of the relationship between the incidental and the permissible uses."

It is important to note, however, that the Court refrained from finding whether the barn used as a dwelling for farm labor housing was exempted from the bylaws as incidental to a permissible activity. Thus, the force of Section 3 to farm labor housing persists only as long as the structure, or the use of land to which it is accessory, remains in an agricultural use.